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DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P.  
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SUITE 2800  
DALLAS TX 75201-2784

In re Patent No. 6,907,051	: DECISION ON REQUEST FOR
Issued: June 14, 2005	: RECONSIDERATION OF
Application No. 09/945,370	: PATENT TERM ADJUSTMENT
Filed: August 31, 2001	: AND
Attorney Docket No. 60988-P002US-	: NOTICE OF INTENT TO ISSUE
10103486	: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed August 8, 2005.

The request is **GRANTED**.

On October 14, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date was two hundred eighty-two days. On January 13, 2005, applicants timely<sup>1</sup> submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred two (302) days. Applicants disputed the reduction of fifty-eight (58) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed October 9, 2001.

On June 14, 2005, the above-identified application matured into U.S. Patent No. 6,907,051, with a revised PTA of two hundred forty-four (244) days. The instant application for PTA, filed August 8, 2005, was timely filed within two months of the patent grant. Patentees maintain that the patent should have issued with a patent term adjustment of 302 days.

On May 4, 2005, a decision granting the January 13, 2005 "Application for Patent Term Adjustment", advised that because the response to the Notice to File Missing Parts was not filed within the three-month period under 37 CFR 1.704(b), the response was received eight days over the three-month period for reply and accordingly, applicant's delay should have been assessed as eight (8) days. Applicant was further advised that

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<sup>1</sup> PALM records indicate that the Issue Fee was received in the Office on January 13, 2005.

the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred thirty-two (332) days.

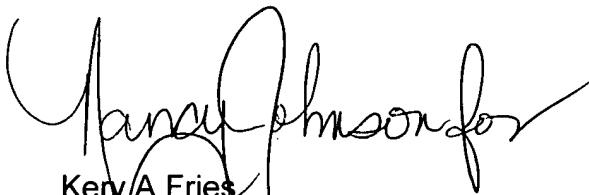
After the issuance of the patent however, additional delays have been recorded that again have caused the Patent Term to adjust. Specifically, 32 days were added for PTO delay in issuance of the patent and 120 days were deducted for applicant delay for a miscellaneous incoming letter filed on January 13, 2005. A review of the application record reveals that the reduction of 120 days was based on the filing after allowance of an Application for Patent Term Adjustment, filed January 13, 2005. Thus, it is concluded that the patent term adjustment should not have been reduced by 120 days.

The submission of an application for patent term adjustment under § 1.705(b) (with or without request under § 1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section. See 37 CFR 1.704(e).

In view thereof, the patent term adjustment should be three hundred sixty-four (364) days.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by three hundred sixty-four (364) days

Telephone inquiries specific to this matter should be directed to Petitions Attorney, Patricia Faison-Ball at (571) 272-3212.



Kery A Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction